



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kimberly J. Becker

SUBJECT: SEE BELOW

DATE: March 25, 2015

Approved

Date

4/2/15

**SUBJECT: TRANSPORTATION NETWORK COMPANY MANAGEMENT AND
OPERATING PLAN AT THE NORMAN Y. MINETA SAN JOSE
INTERNATIONAL AIRPORT**

RECOMMENDATION

Approve a Management and Operating Plan for Transportation Network Companies (TNC's) that meet all requirements necessary to issue a Ground Transportation Permit at the Norman Y. Mineta San José International Airport.

OUTCOME

The purpose of this memo is to inform the Council on current conditions related to Transportation Network Companies (TNC's), provide an overview of Airport staff's Management / Operating Plan to issue Ground Transportation Permits to qualified TNC's and discuss the Airport's approach to managing TNC's after permits authorizing TNC's to operate at the Airport are issued.

BACKGROUND

The San José Municipal Code (Chapter 25.08, Part 7) provides that no Ground Transportation Provider shall pick up passengers, parcels, packages or baggage at the Airport without a Ground Transportation Permit issued pursuant to the Municipal Code. The Municipal Code defines a "Ground Transportation Provider" as any person providing ground transportation services to and/or from the airport by taxi, limousine, charter party carrier, van, shuttle or bus or other ground transportation common carrier to the general public or shuttle services for airline employees and courtesy transportation provided for business purposes. Permitted Ground Transportation Providers pay permit and trip fees pursuant to the current Airport Fee Resolution (Resolution No. 76937).

The California Public Utilities Commission (PUC) defines a "Transportation Network Company" (TNC) as an organization that provides prearranged passenger transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles. The CPUC regulates TNC's as charter-party carriers pursuant to State law. UberX, Lyft and Sidecar operate as TNC's in California. UberBlack, which connects passengers with large black SUV's, town cars, and limousines rather than personal vehicles and will be referred to as a TNC for the purposes of this memo, is regulated by the CPUC in the same manner as limousine companies (as a Transportation Charter Party (TCP).

As charter-party common carriers regulated by the CPUC, TNC's are Ground Transportation Providers subject to the City's Ground Transportation Permit requirements. If a Ground Transportation Provider (including TNC's or TCP's such as Uber) wishes to pick up passengers at the Airport, it may apply for an Airport Ground Transportation Permit, which the Municipal Code provides will be issued by the Director of Aviation upon the submission of a complete application, compliance with all applicable permit requirements, and payment of all applicable deposits and fees. A Ground Transportation Permit applicant whose application is denied is entitled to a hearing before the Director of Aviation with an appeal to the Airport Commission.

The following information provides a list of the requirements set by the California Public Utilities Commission (CPUC) on Transportation Network Companies (TNC's) and any additional Airport requirements needed to receive a Ground Transportation Permit as a Pre-Arranged service provider at the Airport. A spreadsheet comparing these requirements, as well as the requirements of TCP's such as limos companies, is provided as Attachment A to this memo.

TNC's: Current California Public Utilities Commission (CPUC) Requirements and additional SJC requirements for TNC's:

- **Criminal Background Check:** Must conduct criminal background checks for each applicant before they are authorized by the CPUC as TNC drivers. No additional background check will be conducted by SJC.
- **Drug and Alcohol Use:** Must implement and disclose a zero tolerance policy on driver's use of intoxicating substances. TNC must disclose to customers how to report drivers under the influence and drivers are suspended promptly after a complaint is filed. On Airport property, drivers are prohibited from consuming or being under the influence while on duty. Must follow CPUC drug testing program
- **DMV Pull Notice Program:** TNC cannot legally enroll in a Pull Notice Program because drivers are not employees of the company. TNC's must check each driver's record prior to allowing them to operate on the TNC platform. Quarterly thereafter.
- **Inspections:** All vehicles must undergo a 19 point inspection at specified inspection stations prior to being accepted by a TNC, and annually thereafter. Inspection is performed by a facility licensed by the CA Bureau of Automotive Repair. At SJC, vehicles must be compliant with California Vehicle Code (CVC) and CPUC

requirements. The Airport reserves the right to perform inspections of vehicles at any time.

- **Insurance**: Must maintain \$1M dollar insurance policy for vehicles up to seven (7) passengers. The TNC insurance policy is considered the primary coverage while any TNC is on Airport property.
- **Driver Training**: Must provide reports to the CPUC on mandatory driver training program.
- **Mandatory Reporting to the CPUC**: Accessibility Plan (ADA), services provided broken out by zip code, problems with drivers, hours logged by drivers, proof of drivers completing training course.

Airport Management / Operational Plan for TNC's:

ANALYSIS

The primary regulatory differences between TNC's and taxis are that TNC's are regulated by the CPUC, similar to limousines and shuttles, but taxis are regulated by the City. For TNC operators that meet all applicable Ground Transportation Permit requirements, Airport staff plans to issue Ground Transportation Permits in the same manner as any other limousine or shuttle companies regulated by the CPUC.

Like all other ground transportation operators, TNC's will be authorized to drop off at the curb. TNC's, like pre-arranged limo and shuttle services, will be assigned designated pick-up areas on airport property and must pick up passengers in these areas (*maps of these areas are provided as Attachments B and C*).

Failure to pick up passengers in these designated areas will result in Airport Citations being issued to TNC drivers in the amount of \$75 or \$250 dollars depending on the nature of the violation. Continued violations of Airport policy and the Airport-issued Ground Transportation Permit can result in suspension and/or revocation of the company's Ground Transportation Permit.

Initial and renewal fees paid by TNC's are also set by the CPUC, just as they are for TCP's such as limos and shuttle services. It is important to note that this differs from taxi's who are regulated by the City, not by the CPUC. Fares for taxi permitting are established by the SJPD permitting bureau. A comparison of fees paid by pre-arranged services regulated by the CPUC and fees paid by taxi cab companies and drivers regulated by the City is provided as Attachment D.

To the best of Airport staff's knowledge, the TNC's currently operating in San José meet all of the CPUC requirements and are authorized to operate their business under State law. Once the Airport issues a Ground Transportation Permit to authorized TNC's, the 'Go Forward' plan is as follows:

Collection of Fees: As TNC cars and drivers number in the thousands, Airport staff does not intend to issue Automated Vehicle Identification (AVI) tags to each driver / vehicle. The TNC's will be required to set up a Geo-Fence, an electronic boundary that automatically captures each vehicle associated with a specific TNC company as it tracks on and off airport property, surrounding the airport.

Using the data collected by the Geo-Fence, the TNC companies will provide monthly reports to the Airport identifying all pick-ups from Airport property and the Airport will invoice the company for those trips. The trip fee established by City Council in March, 2014 for ground transportation providers is \$2.30 per trip (pick-ups only). Based on feedback received from one of the TNC companies, it can be estimated that approximately 350 pick-ups occurred on this single day in late 2014 with just this one company. If future trips continue to occur at similar levels, the expected revenue generated and paid to the Airport by this individual company can be estimated at about \$24,000 dollars per month and \$290,000 annually. We anticipate that there could be up to five (5) authorized companies requesting permits from the Airport that would make pick-ups at SJC in varying numbers.

With today's Council direction, Airport staff expects to issue Ground Transportation Permits to all TNC companies that currently meet CPUC and Airport requirements and are authorized by the CPUC to operate in the state of California. UberX is currently prepared to enter into agreement with the Airport.

EVALUATION AND FOLLOW-UP

Airport staff knows that Transportation Network Companies (TNC's) are already operating routinely at the Airport and the services they provide have proven to be very popular with airport customers. As Silicon Valley's Airport, it is imperative that Norman Y. Mineta San José International Airport remain current with evolving trends, businesses, and services expected of Silicon Valley and desired by the citizens of San José and the traveling public. Airport staff believes to position the Airport as a leader in the industry and as a facility offering extreme convenience, ease of access, and excellent customer service, it is incumbent upon the City and the Airport to ensure TNC's meet all current requirements imposed by the CPUC and the Airport and subsequently issue Ground Transportation Permits authorizing TNC's to operate at SJC.

As evidenced by the feedback received from a TNC regarding a single day's activity showing 350 airport pick-ups were performed, it is quite obvious that this is a service that airport customers want and use. TNC's have worked diligently to tighten up their internal policies and procedures since their inception and have improved their operating conditions.

Prior to issuing a Ground Transportation Permit to any of the TNC's requesting to operate at SJC, Airport staff will require payment of trips fees dating back to the City's original February 27, 2014, notice to Uber and all TNC companies then currently in existence to cease operating at

the Airport until such time as the companies applied for and were issued an Airport Ground Transportation Permit. In Uber's case, this could result in as much as \$192,000 dollars in trip fees dating back to the February 27, 2014 cease and desist notice. TNC's and Uber will also be required to pay all currently unsettled fines associated with administrative citations issued while not authorized to operate at the Airport. In Uber's case, this amount is approximately \$62,000 dollars.

Impact on Current GT Providers:

While ground transportation providers operate in a competitive, free trade marketplace, we understand the concerns of existing service providers, such as taxi or limousine companies, that a significant portion of their business may be impacted by TNC's. The RFP on the street for on-demand taxi dispatch services includes an addendum that encourages potential bidders to the contract to offer technological solutions that will assist and support a more effective taxi dispatching process. It is known that software applications either exist or are under development that can help the taxi industry evolve and compete with a growing ride-share industry. It is believed that these applications (e.g. Curb, Flywheel, and others still in development) can help transition the On-Demand dispatch and privately taxi companies into a more dynamic, flexible, and competitive environment. Benefits could include but are not limited to significantly reducing staging area wait times, increased service to the City, and more efficient dispatching of cabs at the airport.

Finally, SJC will continue to provide an on-demand taxi program for customers who do not prefer the services of a TNC, but rather the traditional taxi or shuttle operation that allows the customer to find a cab or shuttle readily available in close proximity to the Arrivals Area / Baggage Claim facilities at both Terminals A and B.

As additional information, several taxi companies are creating their own APPS such as Yellow Cab's "CURB" that operates much like a TNC app. Taxi drivers may also develop relationships with repeat customers and provide 'pre-arranged' services to those customers. A customer familiar and comfortable with a particular taxi driver can call that driver directly when traveling from or to SJC. The passenger can 'pre-arrange' to be picked up at home, dropped off at the airport, or picked up at the airport and driven home upon arrival.

With this understanding, staff suggests that it is in the City's, Airport's, and customer's best interest to issue Ground Transportation Permits to qualified TNC's who meet the requirements of the CPUC and the Airport, allowing them to provide service to the Airport and customers desiring this service. The issuance of Ground Transportation Permits to qualified TNC's will result in an immediate and new revenue stream that supports the Airport's Priority of advancing financial sustainability and providing excellent customer service and convenience. It is expected as stated earlier in the memo, that the UberX / Uber operation alone can generate approximately \$25,000 dollars per month and \$290,000 dollars per year. This accounts for only one company and does not take into consideration other TNC's that may approach SJC and request to operate

at the Airport. At this point that revenue flow is unknown and cannot be projected until such time as Airport staff is approached by other CPUC authorized TNC's, opens conversations with their representatives, and can request trip reports.

It is anticipated that after Council review of this memo and subsequent discussion of the TNC Management / Operating Plan that the Airport will go forward with issuing a Ground Transportation Permit to qualified TNC companies.

POLICY ALTERNATIVES

In the event that Council does not approve the proposed Management and Operating Plan for TNC's, the TNC's that meet all current CPUC and Airport requirements for issuance of an Airport Ground Transportation Permit will remain eligible to operate at the Airport under the provisions of the Airport Ground Transportation Permit but without the additional requirements for TNC's that are provided for in the proposed Management and Operating Plan. Ground Transportation Permits may be issued however, conditions such as picking up at designated areas and establishing a geo-fence and payment method of trip fees can be compromised.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's Internet website for the March 24, 2015 Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

Cost implications can result in the loss of an anticipated quarter of a million dollars or better of new revenue stream to be received in trip fees paid by TNC's if not authorized to operate at the Airport. It should also be understood and clear that TNC's are and will remain part of the Pre-Arranged System at SJC, are not part of the On-Demand System, and therefore have no direct impact positively or negatively on cost structures within the On-Demand System. Revenues collected from TNC's will be deposited in the Airport Revenue Fund.

Administrative costs related to Airport staff are minimal as staff will only be required to process Ground Transportation Permit requests from a relatively small group of TNC companies. Airport staff is not issuing AVI tags to TNC drivers and subsequently not performing inspections of TNC vehicles. That responsibility is incumbent upon the TNC to meet CPUC requirements.

The Airport reserves the right to inspect vehicles but it is not a requirement as no AVI tag is being issued.

It is expected that on occasion, Airport staff will perform random audits to compare TNC trip reports to 3rd Party credit card transaction reports to check accuracy for invoicing.

CEQA

Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment.

/s/
KIMBERLY J. BECKER
Director of Aviation

For additional information, please contact Bob Swensen, Airport Operations Manager / Landside Services at (408) 392-3514.

Attachments:

- Attachment A: List of requirements set by the CPUC, the City, and the Airport
- Attachment B Map depicting designated TNC Pick-up Area at Terminal A
- Attachment C: Map depicting designated Pick Up Area at Terminal B
- Attachment D: Comparison of fees set by the CPUC, the City, and the Airport
- Attachment E: A sample Airport-issued Ground Transportation Permit

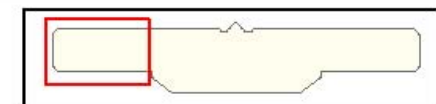
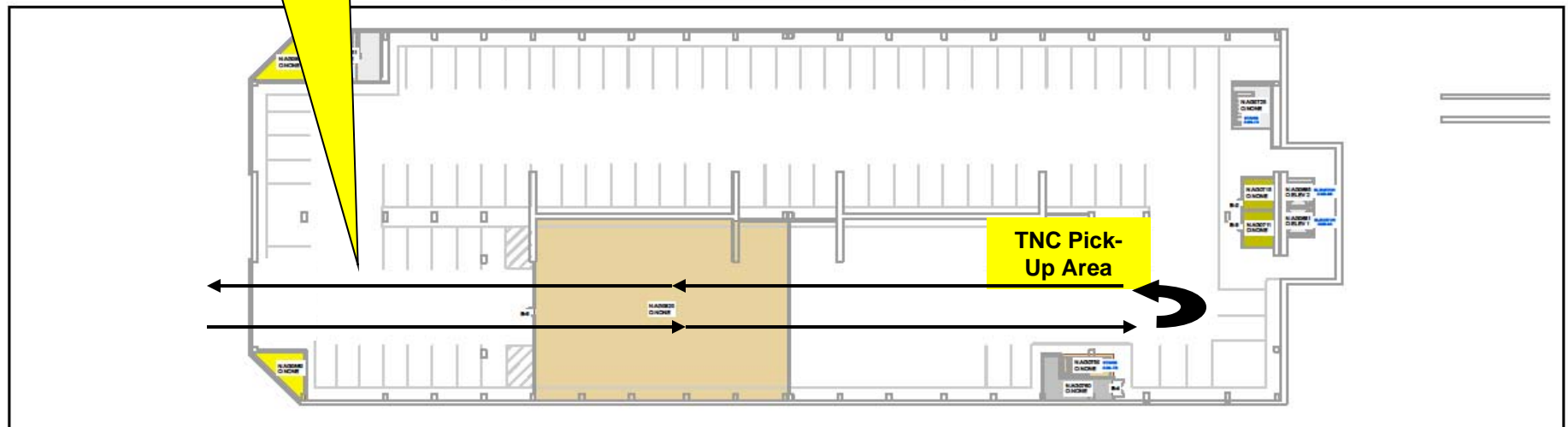
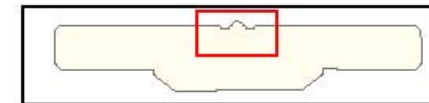
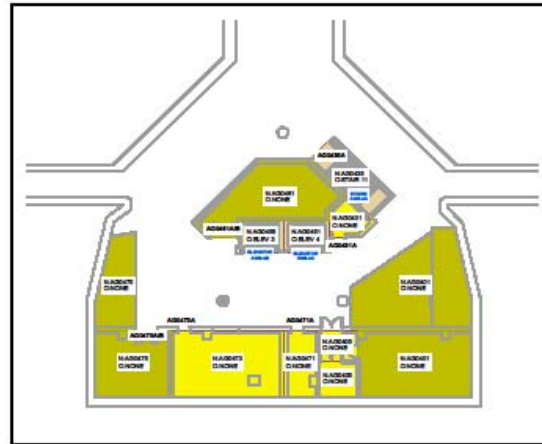
Attachment A

CPUC Comparison Between Charter Party Carrier (TCP), TNC and SJC

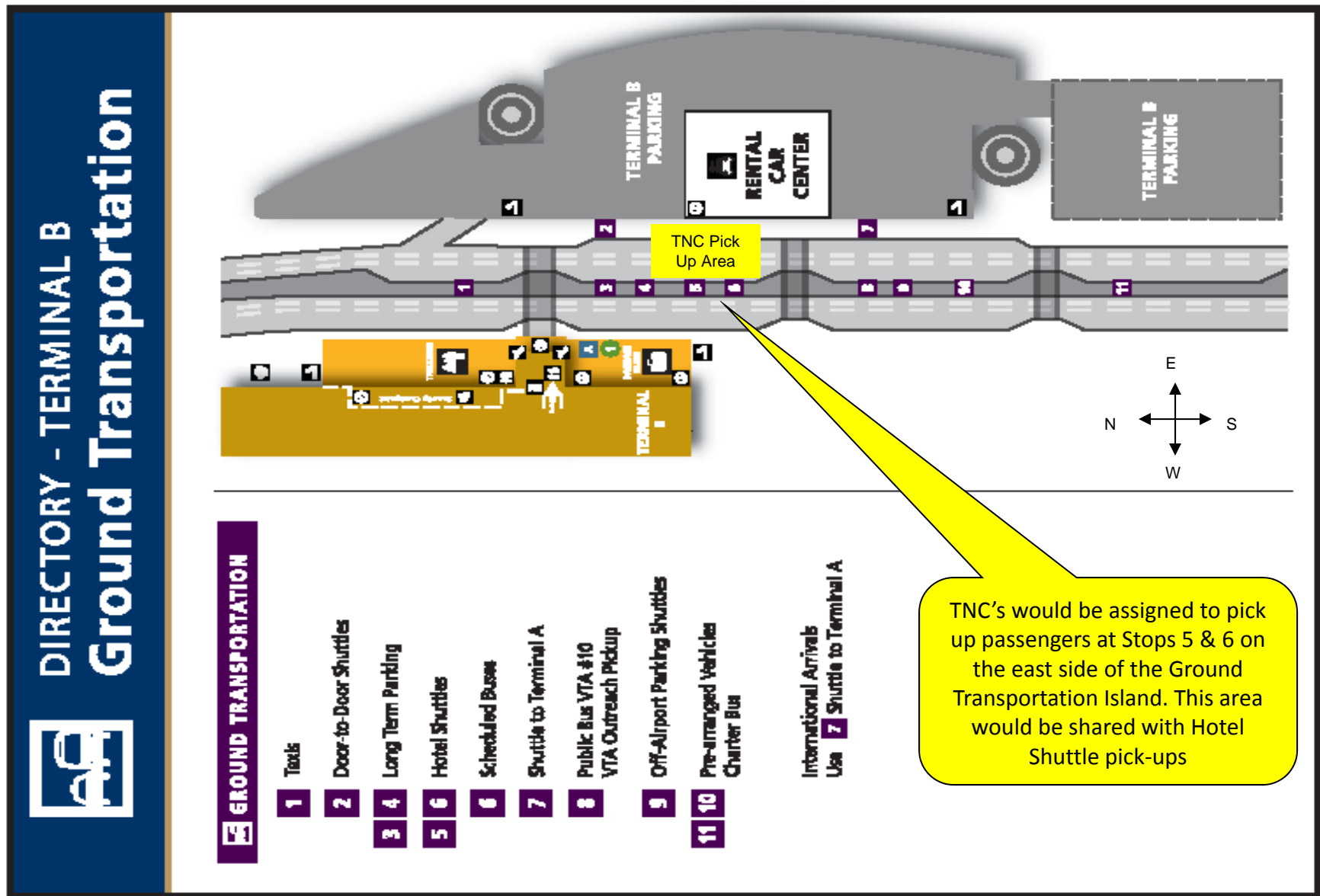
SJC REQUIREMENTS		CPUC REQUIREMENTS	
<u>RULE</u>	<u>AIRPORT</u>	<u>TCP</u> (Transportation Charter Party)	<u>TNC</u> (Transportation Network Company)
Criminal Background Check	No Requirement	No Requirement	Must conduct national criminal background checks for each applicant before they become drivers . Convictions of certain crimes within 7 years disqualifies drivers. (Uber checks annually)
Drug and Alcohol Use	Drivers are prohibited from being under the influence of drugs/alcohol on Airport property	Prohibited from consuming or being under the influence while on duty; must follow cpuc drug test program	Must implement and disclose zero tolerance policy for driver's use intoxicating substances. Must disclose to riders how to report drivers under the influence; suspend drivers promptly after complaint filed.
DMV Pull Notice	No Requirement	Required to enroll in DMV "employer pull notice" program. (receive automatic notices of adverse entries or actions on driving records.)	Can't legally require enrollment in pull notice program because drivers not employees. TNC's must check each driver's driving record prior to allowing them on the platform, quarterly thereafter.
Inspections	Vehicles must be compliant with CVC and PUC requirements. Airport reserves the right to perform inspections anytime.	Every carrier must inspect all vehicles and maintain docs; 10 pax or more require chp inspection	Prior to operating and annually thereafter, vehicles must pass 19 point inspection with specific inspection points. Inspections completed by either TNC or facility licensed by CA. Bureau of Automotive Repair
Insurance	Up to 7 pax \$750,000 (taxi - \$300,000)	Up to 7 pax \$750,000	Up to 7 pax \$ 1 million
	TNC policy is primary - driver covered while on Airport property		
Driver Training	No requirement	No requirements	Must provide reporting on mandatory driver training program
Mandatory Reporting	No requirement	No requirement	Accessibility plan, service by zip code, problems with drivers, hours logged by drivers, drivers completing training course

Attachment B: Terminal A TNC Pick-Up Area

TNC vehicles will enter the garage at the south end, proceed north, U-turn, pick up passenger at Pick-Up Area and proceed south to exit



Attachment C: Terminal B TNC Pick-Up Area



Attachment D: Fee Structures

Fee Requirement	Pre-Arranged (CPUC)	Fee	On-Demand (SJPD)	Fee
Application Fee	Door to Door / Scheduled Buses	\$500	New Taxi Company	\$12,444 (one time fee)
	Limousine, Charter Bus, TNC	\$2,500 (valid for 3 years)	New Taxi Driver Permit	\$272 (valid for 2 years)
Renewal Fee	Door to Door / Scheduled Buses	None	Taxi Company	\$2,992 (every year)
	Limousine, Charter Bus, TNC	\$100 (every 3 years)	Taxi Driver	\$81 (every 2 years)
			Taxi Inspection	\$39 (every 2 years)

Attachment D continued: Airport Fees

Airport Fee	Pre-Arranged	On-Demand
Drop-Off Fee	None	None
Pick-Up Fee (regular fuel)	\$2.30 per trip (50 cent reduction on trip fee for clean fuel - \$1.80)	\$2.30 per trip (50 cent reduction on trip fee for clean fuel - \$1.80)
On-Demand Mgt Fee	None	\$1.60 per trip



**GROUND TRANSPORTATION PERMIT
FOR
GROUND TRANSPORTATION PROVIDERS
COMING ONTO
NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT**

ISSUED TO:

(OPERATOR/COMPANY NAME)

A _____ **OPERATOR**
(OPERATOR TYPE)

PERMIT NO. _____

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Exhibits:

A - Rules and Regulations

B - Approved Locations for Pick-up and Drop-Off

C - Insurance

GROUND TRANSPORTATION PERMIT FOR GROUND TRANSPORTATION PROVIDERS COMING ONTO NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

THIS GROUND TRANSPORTATION PERMIT FOR GROUND TRANSPORTATION PROVIDERS COMING ONTO NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT ("Permit") shall commence on the date set forth on Director's Signature Page ("Commencement Date") and is issued by the City of San Jose, a municipal corporation of the State of California (hereinafter "City") to _____, a corporation authorized to do business in California (hereinafter "Permittee").

RECITALS

WHEREAS, the City of San Jose is empowered to grant the right and privilege to operate as a Ground Transportation Provider with passenger or parcel pick-ups and drop-offs at the San Jose International Airport; and

WHEREAS, Permittee as a Ground Transportation Provider represents and warrants that it possesses the necessary experience and qualifications to operate as a Ground Transportation Provider with passenger or parcel pick-ups and drop-offs at San Jose International Airport; and

WHEREAS, the Director, as defined in Article I herein is empowered pursuant to the provisions contained in Sections 25.08.700 and 25.08.510 of the Municipal Code, as defined in Article I herein, to grant to Ground Transportation Providers the right to conduct pick-ups and drop-offs of passengers or parcels at the Airport (more particularly at Terminal A and Terminal B, collectively the "Terminals"); and

WHEREAS, Permittee desires to be granted the non-exclusive privilege of operating as a Ground Transportation Provider by executing a permit granted by City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and other provisions contained in this Permit, the parties agree:

ARTICLE 1 - DEFINITIONS

The words and phrases as used in this Permit shall have the following meanings, unless the context clearly indicates otherwise:

"Administrative Citation" means an enforcement citation issued by an authorized City employee pursuant to Chapter 1.15 of the Municipal Code, for violations

of the terms of conditions of this Permit or the Release Regulation, among other violations.

"Administrative Fee" is defined in Section 4.1 of this Permit.

"Airport" is defined in Chapter 25.01 of the Municipal Code.

"Airport Customer" means any user of the Airport who proposes to use a ground transportation provider's services, including, without limitation, for parcel delivery or pick-up.

"Application" means the form "Ground Transportation Permit Application" approved by City, as duly and accurately completed by Permittee prior to the issuance of this Permit, as the terms of such Application may be amended from time to time by City.

"Application Fee" is defined in Section 4.1 of this Permit.

"Automatic Vehicle Identification System (AVI System)" means a system for the automatic tracking of Vehicle movement on the Airport roadways and in or on parking facilities, which may include, without limitation, the placement of a transponder or other device upon a Vehicle.

"Business Day" means any calendar day except Saturday, Sunday and any other day observed as a legal holiday by the City of San Jose. For purposes of this Permit, if the time in which any act is to be performed falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the following business day.

"City" means the municipal corporation known as the City of San Jose, in the County of Santa Clara, State of California, and any successor thereto. City shall also mean the person, division, department, bureau, or agency as may from time to time be expressly designated by the Council to exercise functional authority and control over given areas of responsibility with respect to rights and obligations of City under this Permit.

"Commencement Date" is defined on Director's signature page of this Permit.

"Commercial Activity" is defined in Chapter 25.01 of the Municipal Code.

"Courier Operator" is defined in Chapter 25.01 of the Municipal Code.

"Day" means any calendar day, unless a Business Day is specified.

"Director" means the City's Director of Aviation, or such person as may be designated to carry out the duties of Director under this Permit.

"Expiration Date" is defined on the Director's signature page.

“Gross Revenues” is defined by City Council Resolution, for the purposes of any gross revenue based fees to be paid by a Ground Transportation Provider pursuant to this Permit.

“Gross Revenues Fee” means a fee based upon a percentage of Gross Revenues, as established by Resolution of City Council.

“Ground Transportation Provider” is defined in Chapter 25.01 of the Municipal Code.

“Laws” means any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other governmental agency or authority having jurisdiction over the parties in effect either at the time of execution of this Permit or at any time during the term of this Permit, including, without limitation, any regulation or order of a quasi-official entity or body.

“Manager” means the Contractor retained by the City to provide On Demand Ground Transportation Dispatch Services Management.

“Municipal Code” means the San Jose Municipal Code, as amended from time to time.

“Off-Airport Car Rental Agency” is defined in Chapter 25.01 of the Municipal Code.

“Permit” means this Ground Transportation Permit for Ground Transportation Providers Coming Onto Norman Y. Mineta San Jose International Airport.

“Permittee” means the entity defined on page 1 of this Permit. Unless the context requires otherwise, any reference to Permittee shall be construed to include any of Permittee's drivers, employees, representatives and other agents.

“Pre-arranged” means the providing for hire of commercial ground transportation to or from the Airport, where such transportation was contracted or arranged for by or on behalf of the passenger or parcel customer, in advance of the passenger's arrival or parcel's arrival at the Airport, or after the passenger's arrival at the Airport by communicating with a Ground Transportation Provider. Pre-arranged transportation includes transportation provided for business purposes, even though it is provided as a courtesy and the passenger is not directly charged for such transportation.

“Provision” means any term, agreement, covenant, condition, clause, qualification, restriction, reservation, or other stipulation in this Permit that defines or

otherwise controls, establishes, or limits the performance required or permitted by either party. All Provisions, whether covenants or conditions, which are applicable to Permittee, shall be deemed to be both covenants and conditions.

"Rules and Regulations" means those Mineta San Jose International Airport Commercial Ground Transportation Rules and Regulations which the Director now or hereafter enacts, and as may be amended from time to time, attached hereto as **EXHIBIT A**.

"Solicitation" means the uninvited initiation of a conversation or other uninvited contact by a driver, other employee, representative or agent (whether formal or informal) of any Ground Transportation Provider with any person, for the purpose of enticing or persuading said person to use any service or facilities provided by the Ground Transportation Provider or any affiliate of any Ground Transportation Provider.

"Tax" shall mean and include any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

"Taxicab" is a passenger vehicle for hire, used to transport passengers on public streets. The charge for use of a taxicab is determined by a taximeter.

"Taxicab Services Provider" is a Ground Transportation Provider who transports passengers in a Taxicab.

"Terminal A" means that certain airline terminal building and related parking facility at 2077 Airport Boulevard, San Jose, California.

"Terminal B" means that certain airline terminal building and related parking facilities at 1701 Airport Boulevard, San Jose, California.

"Trip" A Vehicle shall be considered to have made one Trip each time the Vehicle uses the Airport for pick-up or drop-off activities.

"Trip Fee" means a fee established by resolution of City Council for each Trip of Permittee's Vehicle(s), payable to the City.

"Vehicle" means any automobile, truck, van, bus, limousine, motorcycle, bicycle, and other wheeled conveyances (except aircraft), operated by a Ground Transportation Provider, in which any person or property can be transported upon land.

"Vehicle Identification Decal" means a decal issued by the Airport to be placed on each permitted Ground Transportation Provider's Vehicle to identify those Vehicles approved to operate on Airport premises.

"Vehicle Tracking System" means an AVI System or any alternative system approved by the Director and utilized by Permittee for the tracking of Vehicle movement on the Airport roadways and in or on parking facilities.

"Waybill" for all but Courier Operators, means a document containing the passenger's name(s), the number of persons in the party, the location of the pick up, and the airline and flight number on which the passenger arrived or will arrive.

For Courier Operators, Waybill means a document containing the customer's name, the airline and flight number on which the parcel will arrive or to which the parcel is delivered to. Waybills shall be either in the form of the City's approved Waybill or in the Ground Transportation Provider's standard Waybill for use at the Airport, as submitted to and approved by City.

ARTICLE 2 - TERM OF PERMIT

The term of this Permit shall commence at 12:01 a.m. on the Commencement Date set forth on Director's signature page and shall expire on the Expiration Date set forth on the Director's signature page unless earlier suspended or revoked in accordance with Article 9 below. In no event shall this Permit be renewed unless (i) Permittee is in compliance with all terms and conditions of this Permit, (ii) the City has received the Administrative Fee in full and (iii) City has issued an extension to this Permit.

ARTICLE 3 - USE AND PRIVILEGES BY GROUND TRANSPORTATION PROVIDERS

3.1 **Use.** City hereby authorizes Permittee for the Term, and subject to all the terms, conditions and covenants of this Permit, only to provide service to Airport Customers for one of the following services, as indicated on the Application and at specific locations as specified by the Director on **EXHIBIT B**, as such locations may be changed by Director; (i) for Courier Operators, pick-ups and delivery of parcels, (ii) for Taxicab Services Providers, making Pre-arranged passenger pickups and dropoffs at the approved areas of the Terminals, (iii) for Taxicab Services Providers or Door-to-Door Shuttle Operators making On Demand and Pre-arranged passenger pickups at the approved areas of the Terminals and (iv) for all other Ground Transportation Providers, pick-ups and drop-offs of passengers and their baggage at the specified locations and curbs of the Terminals. Permittee shall use approved Vehicles as specified on the Application or as otherwise expressly approved by Director in writing, in accordance with the terms and conditions contained in this Permit.

3.1.1 Permittee understands and agrees that the rights and privileges conferred to it under this Permit are non-exclusive and do not establish or vest in Permittee any right to preferential use of Airport facilities relative to other commercial users of the Airport, nor do they restrict the Airport from granting exclusive or priority uses of Airport facilities to others.

3.1.2 Permittee agrees that the City may publish or disseminate any information provided by Permittee about schedules, routes, rates and charges. City shall not be liable to Permittee for any inadvertent errors in the information published or disseminated. Permittee shall indemnify and hold harmless City from any claims or costs arising from inaccuracies in the information provided by Permittee to City and/or Permittee's failure to follow the schedules or routes provided to City.

3.2 **Limitations on Use.** Permittee's use of the Terminals and the Airport shall be limited as follows:

3.2.1 Permittee shall not do or permit anything to be done in, on, or about the Terminals, or the Airport, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any Laws now in force or which may hereafter be enacted or promulgated, or which is prohibited by a standard form of fire insurance policy or will in any way increase or affect the then existing rate of any fire or other insurance required to be carried upon the Airport, or the Terminals, or any part thereof, or any of their contents, or which will cause a cancellation of any insurance policy covering the Airport, or the Terminals or any part thereof or any of their contents.

3.2.2 Permittee shall not do or permit anything to be done in, on, or about the Terminals or the Airport or to omit to do that which will in any way obstruct or interfere with the rights of other occupants located in, on, or at the Airport or the Terminals (provided such other occupants' rights are not in conflict with Permittee's rights).

3.2.3 Permittee shall not commit, cause, maintain, or permit or suffer, or allow to be committed, caused, maintained, or permitted, any legal waste upon the Terminals or the Airport, nor any public or private nuisance, nor any other act or thing which may disturb the quiet enjoyment of any other tenant, licensee, invitee, or person using or occupying any portion of the Terminals or the Airport.

3.2.4 Permittee, or any agents or employee of Permittee, shall not engage in Solicitation.

3.2.5 Permittee and Permittee's drivers, employees, representatives and other agents shall comply with all Laws, including, without limitation, the Rules and Regulations.

3.2.6 Permittee's drivers, employees, representatives or other agents shall not enter the terminal buildings or leave the Vehicle except to assist in loading baggage, as permitted by the Rules and Regulations or unless leaving the Vehicle is necessary for a pre-arranged passenger pickup or parcel pick-up or delivery. Any such person entering a terminal for a pre-arranged passenger pick-up must have a Waybill evidencing such pick-up, prepared in advance of entering the terminal building. The

driver, or other person entering the terminal building shall present the Waybill upon request of any Airport official. Nothing herein allows any driver to leave any Vehicle to be left unattended, unless specifically allowed under this Permit or the Rules and Regulations. All Courier Operators entering the Terminals must also have a Waybill.

3.2.7 The City reserves the right to construct or designate (through Director) areas where Permittee's Vehicles shall be parked when not actively loading or unloading passengers. Permittee shall pay the fees established by resolution of City Council for use of such areas.

3.2.8 City may, in City's discretion, determine that a "Starter System" is necessary or preferable to ensure the orderly progression of Vehicles through the designated ground transportation areas. Permittee shall not attempt to pick-up Airport Customers unless it has progressed through the Starter System. Any costs associated with implementation, management and maintenance of this system will be borne by each Permittee required to use the Starter System.

3.2.9 Any changes in Permittee's service levels at the Airport must be submitted in writing to Director, including but not limited to, the type of Vehicle used, schedule changes, and frequency of operation. Any proposed changes must be submitted to the Director at least thirty (30) days prior to the proposed implementation date. The Director shall provide Permittee with the reasons for any denial of proposed change in service levels. If Director has not approved or denied such request within thirty (30) days of receipt, the request shall be deemed approved.

3.3 **Relocation of Operations.** In the event that implementation of the City's requirements for the Airport necessitates the relocation of Permittee's pick-ups and drop-offs at the Airport, Permittee shall relocate all or part of its Ground Transportation Provider operations on the Airport in an expeditious manner and only as may be permitted, directed or required by the Director.

3.4 **No City Guarantee of Business.** By issuing this Permit, City does not make, and has not made, any representation, warranty, assurance, or guaranty that the uses to which Permittee will put its Ground Transportation Provider operation will generate any minimum, maximum, or optimum volume of airline or other passenger traffic business, or that any minimum, maximum, or optimum volume of airline or other passenger traffic business will occur.

3.5 **Personnel.** All drivers, employees, representatives and other agents of Permittee shall conduct themselves in a professional manner and be courteous to the public, passengers, and Airport employees or representatives. Obscene gestures or language, threats, or physical harm, or fighting on the Airport and any gambling, athletic events, drinking of alcoholic beverages by on-duty personnel, possession of or being under the influence of illegal drugs or alcohol is expressly prohibited.

3.6 **Signs and Advertising.** Permittee shall not install, erect, affix, paint, display or place or permit the installation, erection, affixation, painting, display or placement of any sign, lettering, or other advertising device or media in, on, or about the Airport, the Terminals, or any portion thereof, without the prior written consent of the Director. Any and all signs, lettering or other advertising device or media, or any replacement thereof, which may be permitted by the Director shall be subject to, and comply with, Airport signing standards now in effect or as may be hereafter modified or amended. Permittee shall remove or cause the removal at its sole cost and expense of such items on or before the Expiration Date or any earlier termination date, without injury or damage to or defacement of any part of the Terminals, or the Airport. Permittee agrees to promptly restore to their original condition those portions of the Terminals, or the Airport on which the materials referenced herein are attached, or at the Director's option, pay for the costs of restoration performed by City's personnel upon demand of City.

ARTICLE 4 - FEES AND CHARGES

4.1 **Permit Fees.** During the term of this Permit, Permittee shall pay to the City the following fees, for the privilege of coming onto Airport and using Airport's facilities and the economic benefits derived therefrom, and to reimburse the City for the costs of providing services and facilities to Permittee, according to the following:

4.1.1 **Application Fee.** If required by Resolution of City Council, Permittee shall pay to City a non-refundable Application Fee in the amount set forth by Resolution. The Application Fee shall be due and payable upon submission of the Application. The Application will not be accepted without the Application Fee. The Application Fee may be applied to the first year Administrative Fee upon City approval of the Permit to Operate.

4.1.2 **Administrative Fee.** If required by Resolution of City Council, Permittee shall pay to City an annual Administrative Fee in an initial amount set forth on the Application. Said Administrative Fee shall be non-refundable, shall be due and payable in advance and shall be a condition to the effectiveness of Permittee's privileges under this Permit.

4.1.2 **Trip Fee.** If required by Resolution of City Council, Permittee shall pay to City a Trip Fee for each Trip in an initial amount set forth on the Application, in accordance with the payment procedures specified below. The City may establish by Resolution of City Council reduced or varying Trip Fees to encourage the use of specific vehicles such as clean or alternative fueled vehicles or ADA equipped vehicles.

4.1.3 **Gross Revenues Fee.** If required by Resolution of City Council, Permittee shall pay to the City a Gross Revenues Fee as established by City Council, in

an initial amount set forth in the Application, in accordance with the payment procedures specified below.

4.1.4 **Establishment of Fees and Charges.** The Administrative Fee and the Trip Fee, or any other fees and charges for the conduct of Ground Transportation Provider operations are established by Resolution of City Council and may be modified or amended from time to time. Permittee shall be obligated to pay such fees and charges as established by Resolution of City Council and as modified or amended by Resolution of the City Council.

4.1.5. **Payment.**

A. **Administrative Fee.** The Administrative Fee shall be due and payable, in advance, upon the Execution of this Permit, and no less than twenty-eight (28) calendar days prior to the annual anniversary or any renewal of this Permit, if this Permit is renewed by City. Failure to pay the Administrative Fee in full to City no less than twenty-eight (28) calendar days prior to the annual anniversary or expiration of this Permit may result in expiration of the Permit and termination of Permittee's right to conduct operations at the Airport.

B. **Trip Fee and Trip Statement.** Permittee's Trip fee payment is due and payable no later than 30 days of date of City's invoice. Such fee shall be delinquent if not received before 30 days after the date of invoice. City shall calculate the Trip Fees due from the Trip activity recorded by the AVI system.

If requested by the Director, Permittee shall deliver with payment, in a form with detail satisfactory to the Airport, a statement of Permittee's Trips, showing the number of Trips made each day, the total of Trips for the month and the total Trip Fees due from Permittee for such month. Said statement shall be in a format and contain other information as reasonably specified by the Director and shall be certified by an authorized official of Permittee, attesting to the accuracy of the information contained therein. The Director reserves the right to conduct periodic Vehicle Trip audits in addition to monitoring by Permittee's Vehicle Tracking System and to adjust Permittee's monthly Trip Fees and/or security deposit amounts to reflect the adjusted activity levels.

C. **Gross Revenues Fee and Statement.** If Permittee is obligated to pay a Gross Revenues Fee, Permittee shall pay such fee to City within 20 days after the beginning of each calendar month, covering the preceding calendar month or portion thereof. On the due date of the Gross Revenues Fee, Permittee shall also furnish to the Director a statement of Permittee's Gross Revenues for such period. The Gross Revenues

statement shall be signed by a responsible accounting officer of the Permittee. Said statement shall be in form and substance satisfactory to the Director, and shall be in sufficient detail to allow the Director to verify all Gross Revenues received by the Permittee.

- D. **Late Payment or Report.** Permittee shall pay City a Delinquent Report Fee of twenty-five dollars (\$25) per day for each day that **ANY:**
- a. statement of Trips or Gross revenues is not timely received by City.
 - b. monthly On Demand activity report is not timely received by the City. The report shall be in such form and detail as the Director may require, setting forth by permit number, the number of passenger pickups made by Contractor's Airport permitted drivers at locations in Santa Clara other than the Airport during the previous month.

Permittee shall pay a late payment fee equal to one percent (1%) per month of any late payment. The one percent (1%) late payment fee shall be charged to Permittee on the first day of delinquency and for each month thereafter that such payment or portion thereof, is not timely received by City, until full payment is received by City. The assessment of a late payment fee or Delinquent Report Fee shall be in addition to any other remedies City may have under this Permit, or at law or in equity, including interest on amounts not paid when due at the maximum rate allowed by law. Notwithstanding any right or remedy of City on account of such nonpayment, the obligation to pay the outstanding amounts of any fee or charge shall survive the suspension or revocation of this Permit.

- E. **Other Payments.** Any invoiced fees and charges not described in subsection A or B above are due and payable by Permittee on or before one month from the date of City's invoice, and shall be deemed delinquent if not received by City on or before one (1) month after the date of invoice. Permittee shall pay a late payment fee equal to one percent (1%) per month of the amount that is late. The one percent (1%) late payment fee shall be charged to Permittee on the first day of delinquency and for each month thereafter that such payment or portion thereof, is not timely received by City, until full payment is received by City. The assessment of a late payment fee shall be in addition to any other remedies City may have under this Permit, or at law or in equity, including interest on amounts not paid when due at the maximum rate allowed by law. Notwithstanding any right or remedy of City on account of such

nonpayment, the obligation to pay the outstanding amounts of any fee or charge shall survive the suspension or revocation of this Permit.

F. **Place of Payment.** Any payments due hereunder shall be payable in lawful money of the United States, to the City of San Jose, Treasury Division, Department of Finance, 200 East Santa Clara Street, San Jose, CA 95113, or to such person or at such place as City may designate from time to time in writing, free from all claims, demands, set-offs, or counter-claims of any kind against City. Payment must include the name of Permittee as stated in this Permit.

4.2 **Provision of Information.** Permittee in consideration of the execution of this Permit shall provide the information set forth in the Application before execution of this Permit, and shall verify its completeness and accuracy. If Permittee desires City to renew this Permit, Permittee shall provide in writing to City any changes to the information in the Application, no later than twenty eight (28) calendar days prior to the expiration of this Permit.

4.3 **Security Deposit.** Initially, upon execution of this Permit, as security for its full and faithful performance of this Permit, Permittee agrees to pay to City concurrent with the delivery to City of this executed Permit, a Security Deposit in the amount set forth on the Application, in a form acceptable to the Director. If Permittee shall be in violation with respect to any term, provision or condition of this Permit, including but not limited to the timely payment of any fee, charge or other payment due under this Permit, City may apply all or any portion of the Security Deposit to the payment of any sum owing and/or any late fee or any other sum which City may be required or deem necessary to spend or incur by reason of Permittee's violation. In such event, Permittee shall, within thirty (30) days of demand by City, deposit with City the amount so applied to replenish the Security Deposit to the amount required by this Section 4.3. Without limitation of any other right of City, a failure to do so shall entitle City to revoke or suspend this Permit. City shall not be required to keep the Security Deposit separate from its funds, and Permittee shall not be entitled to interest on the Security Deposit. After sixty (60) days but no later than ninety (90) days from the beginning of the term of this Permit, if requested by Director, Permittee shall increase the Security Deposit to equal the greater of the amount set forth on the Application or the total Trip Fees for the sixty-day period. The Director may adjust the Security Deposit requirement in the exercise of Director's discretion if the Director determines that, due to subsequent events or information, the existing security deposit is inadequate to ensure Permittee's full and faithful performance.

ARTICLE 5 - BOOKS AND RECORDS

5.1 **Maintain Records.** Permittee shall maintain for a period of not less than four (4) years or, in the event of a claim by City, until such claim of City for payments

herein shall have been fully ascertained, fixed and paid, separate and accurate daily records of operations at the Airport, showing in detail all Trips taken at the Airport, all business done or transacted in, on, about or from the Airport or pertaining to Permittee's operations relating to Airport Customers, and entries in any such records or books shall be made at or about the time the Trips occur.

5.2 **Inspection of Records.** In the event of any audit, inspection, or review of Permittee's books, ledgers, or records by the City disclose an underpayment by Permittee of any consideration due, Permittee shall pay immediately the amount of such underpayment together with interest from the time such consideration was due at the rate of one percent (1%) per month or the maximum rate then allowed by law. Should any audit, inspection, or review by the City disclose an underpayment by Permittee in excess of one percent (1%) of the consideration due over any period, Permittee shall promptly pay City the amount underpaid for such payment period, and shall promptly reimburse City for all costs incurred in the conduct of such audit, inspection, or review. Failure by Permittee to pay any arrearages or make any reimbursement within thirty (30) days of receipt of demand for payment or reimbursement to the City, shall constitute an event of default. The City reserves the right to determine the time and frequency of such audits, inspections or reviews.

5.3 **City Custody of Records.** Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Permittee's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in the Airport's Administrative Offices. . Access to such records and documents shall be granted to any party authorized by Permittee, Permittee's representatives, or Permittee's successor-in-interest; or as required by law including without limitation the California Public Records Act (Gov. Code Section 6250, et. seq.).

5.4 **Other Information.** Permittee shall furnish City with such other financial or statistical reports as Director, from time to time may reasonably require.

ARTICLE 6 - VEHICLE REQUIREMENTS

6.1 **Identification.** Permittee shall report to the Director, all of the information requested on the Application, for each Vehicle operating at the Airport, prior to allowing such Vehicle to operate at the Airport.

6.2 **Appearance.** Unless expressly permitted by Director, all of Permittee's Vehicles operated at the Airport shall conform to the Vehicle Requirements set forth in the Rules and Regulations:

6.3 **Operator Category Marking.** If Permittee is operating as more than one category of Ground Transportation Provider, Permittee's Vehicles must be marked so that Airport Customers may easily distinguish the particular Vehicle's type of operation.

6.4 **Vehicle Condition.** All Vehicles must be maintained in good and safe mechanical condition and otherwise in compliance with the California Vehicle Code and the California Public Utilities Code. In addition, all Vehicles must be clean and free of any visible damage, must have hubcaps and door handles and all equipment required by the California Vehicle Code and the California Public Utilities Code, if applicable. The Airport reserves the right to perform periodic vehicle inspections to determine that Vehicles are in compliance with standards set forth in this Permit, the California Vehicle Code and the California Public Utilities Code. Director, at Director's discretion, may inspect Vehicles prior to issuance of this Permit.

6.5 **Vehicle Identification Decal and Transponder.** Vehicles may be required to display a Vehicle Identification Decal placed at a location as prescribed by the Director.

The Director may require Permittee to affix a transponder or similar device as part of an Automated Vehicle Identification (AVI) System. The cost of the AVI unit, installing or replacing the transponder shall be borne by Permittee. The City or its agent will be responsible for installing the AVI unit on Permittee's Vehicle and shall do so in a professional manner so as to avoid unnecessary damage to the Vehicle. City shall submit an invoice to Permittee for all reasonable costs of installation. Permittee waives any and all claims against City for any incidental damage caused to the Vehicle by the ordinary process of installing or removing the transponder or similar device, unless solely caused by the negligence of City. Permittee shall execute an acceptance of the installation work done and a waiver of claims for damage from installation of the AVI device upon completion of the installation, unless the Vehicle was unreasonably damaged during installation.

ARTICLE 7 - INDEMNITY

7.1 **Permittee's Indemnification.** Permittee, for and on behalf of its directors, officers, employees and agents, covenants and agrees to indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all claims, demands, liabilities, losses, costs, expenses, penalties, suits, judgments or damages, arising out of or resulting at any time from any injury or death to person or damage to property as a result of the willful or negligent act or omission of Permittee, its officers, employees, or agents, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Airport or the Terminals, or any part thereof, or which arise from Permittee's failure to do anything required under this Permit or for doing anything which Permittee is required not to do under this Permit,

except as may arise from the active negligence or the willful misconduct of City, its officers, employees or agents. This provision shall survive termination of this Permit.

7.2 **Permittee's Assumption of Risk.** Permittee covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Permittee, its directors, officers, employees, agents, and contractors which may occur in, on, or about the Terminals, or the Airport at any time and in any manner, except such loss, injury, or damage as may be caused by the active negligence or the willful misconduct of City, its officers, employees or agents.

ARTICLE 8 - WAIVER

8.1 **Waiver by Permittee.** As a material part of the consideration to be rendered by Permittee to City under this Permit, Permittee waives any and all claims or causes of action against City, its officers, employees and agents which Permittee may now or hereafter have at any time for damage to Permittee's property located in, on, or about the Airport or the Terminals, and for injury to or death of any person occurring in, on or about the Terminals or the Airport from any cause arising at any time, except as may arise from the active negligence or the willful misconduct of City, its officers, employees and agents.

In addition to the foregoing, except as shall arise out of the active negligence or the willful misconduct of City, its officers, employees and agents, Permittee specifically waives any and all claims or causes of action which it may now or hereafter have against City, its officers, employees and agents for any loss, injury or damage arising or resulting from any act or omission of any, licensee, other permittee, sublicensee, or concessionaire of the Terminals or the Airport, or any person who uses the Terminals or the Airport with or without the authorization or permission of City.

8.2 **Reimburse City's Costs.** In the event that Permittee fails to abide by, or violates this Permit, City may (but shall have no obligation to), upon condition that City shall act for the account and at the expense of Permittee and without a waiver of such violation, perform any act which, if performed by Permittee, would otherwise cure the violation. If, in so doing, City is required or elects to pay any money or do any act which will require the payment of any money or the incurring of any cost or expense, Permittee covenants and agrees to reimburse City the sum or sums of money so paid or incurred by City, together with interest at the maximum interest rate then allowed by law, plus costs and damages, as part of its fees and charges, immediately upon receipt of City's invoice therefore. The failure to timely pay the same shall constitute an event of default. Nothing in this section shall relieve Permittee's obligation to pay any late fee or interest or extend the due date of any payment owed by Permittee.

8.3 **Assumption of Risk From Flights.** Permittee agrees to voluntarily assume all risk of loss, damage, or injury to the person and property of Permittee, its

agents, contractors, directors, employees, officers, and representatives, in or about the Airport or the Terminals which, during the term of this Permit, may be caused by or arise or occur in any manner:

8.3.1 From the flight of any aircraft of any and all kinds now or hereafter flown in, through, across, or about any portion of the air space over the Airport or the Terminals; or

8.3.2 From noise, vibration, currents and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during such flight, or from or during the use by aircraft of the Airport, including but not limited to, landing, storage, repair, maintenance, operation, run-up, and take-off of such aircraft, and the approach and departure of aircraft to or from said Airport.

8.4 **No Waiver by City.** The acceptance of the Trip Fee or any other fee or charge hereunder by City shall not be deemed to be a waiver of any preceding violation by Permittee of any provision of this Permit, other than the failure of Permittee to pay such installment of the Trip Fee or such other fee or charge so accepted, regardless of City's knowledge of such preceding or subsequent violation at the time of acceptance of such fee or the waiver of any other right or remedy allowed in law or in equity. The consent or approval by City to any act of Permittee requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent to or approval of any subsequent similar act of Permittee.

ARTICLE 9 - REVOCATION OR SUSPENSION OF PERMIT

City may revoke or suspend this Permit if Permittee at any time fails to conform with its terms, provisions and conditions. Chapter 25.10 of Title 25 of the Municipal Code sets forth the appeal rights of any entity operating as a Ground transportation Provider whose Permit has been denied, revoked or suspended. In addition to all other grounds for suspension or revocation set forth in Section 25.10.030, grounds for revocation or suspension of this Permit for a violation of its terms and conditions under Section 25.10.030A(12) shall include, but not limited to, each of the following failures to conform:

9.1 Permittee fails duly and punctually to pay the Trip Fee, or the Administrative Fee pursuant to the Provisions contained in Section 4.1, or to make any other payment required hereunder, when due to City; or

9.2 The interest of Permittee under this Permit shall be transferred, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, firm or corporation; or

9.3 Permittee fails to keep, perform and observe each and every other term, condition and provision set forth in this Permit, including submission of reports requested herein and such failure shall continue for a period of more than thirty (30) days after delivery by Director of a written notice of such failure to conform; or

9.4 Permittee uses or gives its permission to any person to use any portion of Airport, or Terminals used by Permittee under this Permit, for any illegal purpose; or

9.5 Permittee falsifies records of operations which would be eligible for Trip Fee consideration, through such acts as (but not limited to):

- A. Instructing or suggesting to an Airport Customer that he/she provide any false information relating to the pick-up or drop-off of the Airport Customer;
- B. Providing false information to Airport personnel;
- C. Submitting to Airport officials records of operations and/or Waybills in an altered or fictitious form;
- D. Tampering with an AVI transponder or deliberate avoidance of AVI readers to prevent accurate trip accounting.

In the event City determines Permittee has deliberately mislead City as to the appropriate Trip Fees or Gross Revenues Fee, City may, in addition to any other right or action available, charge Permittee interest from the date of diversion at the lesser of (i) the rate of one and one-half percent (1-1/2%) per month or (ii) at the maximum rate then allowed by law on the total amount of diverted revenue which is otherwise applicable to the Trip Fee from the date of diverted revenues; or

9.6 Permittee fails to comply with the Rules and Regulations; or

9.7 Permittee has not paid all fees and charges or taxes required to be paid to City in order to conduct the Commercial Activity at the Airport; or

9.8 Permittee does not possess all current and valid certifications, licenses, federal, state or local government approvals or other authorizations necessary to engage in Commercial Activity at the Airport; or

9.9 Permittee does not furnish or maintain all bonds, insurance or other form of security as may be required pursuant to this Permit or Chapter 15.04 of the Municipal Code.

ARTICLE 10 - PUBLIC SAFETY INTERRUPTION

City may interrupt or suspend Permittee's activities at the Airport and Permittee's use of the Airport if, in City's sole discretion, such interruption or termination is necessary in the interest of public safety. Permittee hereby waives any claim against the City for damages or compensation should its activities be interrupted or suspended for any period.

ARTICLE 11 - CITY'S ENFORCEMENT OF PERMIT PROVISIONS

If Permittee fails to conform to any of the terms, provisions or conditions of this Permit, then City may elect to take any action available to it in law or in equity including but not limited to:

A. Allow this Permit to continue in full force and effect and enforce all of City's rights and remedies hereunder, including, without limitation, the right to collect fees as they become due together with any interest or late fees due thereon; or

B. Suspend or revoke this Permit in accordance with Chapter 25.10 of the Municipal Code without prejudice to any other remedy or right of action for arrearage of fees. Upon such suspension or revocation of this Permit by City, all rights, powers and privileges of Permittee hereunder shall cease. City will not be deemed to have suspended or have revoked this Permit in the absence of service of written notice upon Permittee to that effect. Revocation or suspension of this Permit may be appealed pursuant to the provisions contained in Chapter 25.10 of the Municipal Code, as amended from time to time. The Administrative Fee shall be forfeited upon revocation of the Permit and must be paid again in full prior to the issuance of any new Permit to Permittee.

ARTICLE 12 - MONETARY DAMAGES

In the event City elects to revoke or suspend this Permit, Permittee shall pay to City an amount equal to the sum of:

12.1 All amounts owing at the time of revocation or suspension on account of Permittee's violation of any term, condition, or provision of this Permit including but not limited to unpaid fees plus any interest or late fees due thereon on all such amounts from the date due until paid;

12.2 Any other amount to compensate City fully for all detriment proximately caused by Permittee's failure to conform to the Permit and applicable Laws or which in the ordinary course would likely result there from.

ARTICLE 13 - REPRESENTATIONS AND WARRANTIES AND COVENANTS

13.1 Permittee represents, warrants and covenants with respect to this Permit and any amendment hereto as follows:

13.1.1 That Permittee has the power and authority to enter into this Permit with City, that the Board of Directors of Permittee has by corporate resolution approved such power and authority to enter into this Permit and bind Permittee, that this Permit shall be executed, delivered and performed pursuant to the power and authority conferred by the Board of Directors of Permittee and be binding upon Permittee, and that the individual executing this Permit is duly authorized to do so.

13.1.2 That there are no unresolved claims or disputes between Permittee and City.

13.1.3 That Permittee shall furnish true and accurate financial statements, records, reports, resolutions, certifications, and other information as may be requested from Permittee by City from time to time during the term of this Permit.

13.1.4 That Permittee is in compliance with all local, state, and federal Laws related to the operation of Permittee's business.

13.1.5 That Permittee shall comply with the Rules and Regulations.

ARTICLE 14 - AIRPORT SECURITY

14.1 Permittee agrees that it shall indemnify and hold harmless City from and against, and agrees to pay or reimburse City for, any fine levied by the United States Federal Aviation Administration against City for any violation of federal airport security regulations caused by or attributable to Permittee, its directors, officers, employees or agents. Permittee shall observe all applicable federal, state, and City laws and procedures on the observation of security at airports.

14.2 Permittee shall faithfully observe and comply with all Rules and Regulations and all reasonable modifications thereof and additions thereto from time to time as may be promulgated by the Director on City's behalf.

14.3 Permittee shall be solely responsible for any vandalism or theft at the Airport by its drivers, employees, representatives or other agents. City shall be responsible only for general security throughout the Airport and shall not be liable for any vandalism that may occur to Permittee's Vehicles.

ARTICLE 15 - GRANT AGREEMENT COVENANTS

15.1 Permittee acknowledges that City is subject to Federal Grant Agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and, accordingly, agrees to, and agrees to be bound by, the following covenants provided by the Federal Aviation Administration, as they may apply to Permittee:

- A. Permittee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on any areas occupied or utilized by Permittee and described in this Permit for a purpose for which a Department of Transportation ("DOT") program or activity is extended or for another purpose involving the provision of similar services or benefits, Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to title 49, Code of Federal Regulations, DOT Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.
- B. Permittee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities, (2) that in the construction of any improvements on, over, or under any areas occupied or utilized by Permittee and the furnishings of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that Permittee shall use any areas occupied or utilized by Permittee in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the regulations may be amended.
- C. That in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Permit and to reenter and reposses any areas occupied or utilized by Permittee and the facilities thereon, and hold the same as if said Permit had never been made or issued. This provision does not become effective until the procedures of 49 CFR, Part 21, are followed and completed including expiration of appeal rights.

- D. Permittee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. Permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- E. Non-compliance with Provision D, above, shall constitute a material breach thereof and in the event of such non-compliance City shall have the right to terminate this Permit without liability therefore or at the election of the City of San Jose or the United States, either or both Governments shall have the right to judicially enforce Provisions A, B, C and D above.
- F. Permittee agrees that it shall insert the above five (5) provisions in any agreement by which Permittee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the permitted premises.
- G. Permittee assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age. Or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This section obligates Permittee or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this Section obligates Permittee or any transferee for the longer of the following periods: (a) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (b) the period during which City or any transferee retains ownership or possession of the property. In the case of contractors from the bid solicitation period through the completion of the contract.
- H. The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Permittee and without interference or hindrance.
- I. The City reserves the right, but shall not be obligated to Permittee to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Permittee in this regard.

- J. This Permit shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the Airport.
- K. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the Airport.
- L. Permittee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any structure or building is planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.
- M. Permittee by accepting this Permit, agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from San Jose International Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon any areas occupied by Permittee and cause abatement of such interference at the expense of Permittee.
- N. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349a).
- O. This Permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.
- P. Permittee, by accepting this Permit expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on any areas occupied or utilized by Permittee to a height above the mean sea level that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Permittee and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Permittee.

15.2 In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Permit, Permittee agrees to consent in writing upon the request of city to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Permit as may be reasonably required to enable City to obtain Federal Aviation Administration funds, provided that in no event shall such changes materially impair the rights of Permittee hereunder. A failure by Permittee to so consent shall constitute a breach of this Permit.

ARTICLE 16 - TRANSFERS

16.1 **Non-transferability.** This Permit is personal to Permittee and Permittee may not assign, transfer, license, convey, or sell this Permit, or any rights of Permittee hereunder, whether voluntarily or by operation of law.

16.1.1 Any transfer in violation of the Provisions of this Article shall be void and shall entitle City, at its option, to terminate this Permit, and the acceptance of the Trip Fee or any other fee or charge by City or the continuation of the Ground Transportation Provider operations by Permittee or the proposed transferee shall not be deemed a waiver of City's right to terminate this Permit on account of Permittee's failure to secure the Director's prior written consent.

ARTICLE 17 - NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be sufficiently given and served upon the other party if (i) personally served, or (ii) if sent by United States certified mail, return receipt requested, postage prepaid, or (iii) if sent by express delivery service, or (iv) in the case of facsimile, if sent to the telephone number(s) set forth below during the normal business hours of the receiving party and followed by delivery of hard copy of the material sent by facsimile, by standard U.S. mail service or in accordance with (i), (ii) or (iii) herein. Personal service shall include, without limitation, service by delivery service and service by electronic facsimile. Delivery of notices properly addressed shall be deemed complete when the notice is physically delivered to an employee of the party to be served. The notice need not be physically delivered by the delivery person to the individual to whom the notice is addressed.

If to City, the same shall be addressed to:

Director of Aviation
Norman Y. Mineta San Jose International Airport
1701 Airport Boulevard, Suite B-1130

San Jose, CA95110-1206
Attn: Landside Operations/Ground Transportation
Facsimile No. 408/392-1144

or to such other places as City may designate in writing.

If to Permittee, the same shall be addressed to the address set forth on the Application, or such other place as Permittee may designate in writing.

ARTICLE 18 - HAZARDOUS MATERIALS - PROHIBITIONS AND RESTRICTIONS

18.1 **Definition of Hazardous Materials.** As used in this Permit, the term "Hazardous Materials" shall mean any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products, and including all of those materials and substances designated as hazardous or toxic presently or in the future by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health, Education and Welfare, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include all of those materials and substances defined as "Toxic Materials" in Section 66680 through 66685 of Title 22 of the California Code of Regulation, Division 4, Chapter 30, as the same shall be amended from time to time.

18.2 **Permittee's Operations Coming Onto Airport.** In conducting its operations as they occur on the Airport, Permittee shall abide and be bound by all of the following requirements:

18.2.1 Permittee shall comply with all federal, state, and local Laws, requirements and policies now or hereinafter in effect relating to Hazardous Materials and environmental conditions on, under or about the Airport including, but not limited to, soil and groundwater conditions, and shall not contaminate the Airport or the subsurface with any Hazardous Material.

18.2.2 Permittee shall restrict its use of Hazardous Materials when it comes onto the Airport to those kinds of materials that are normally used in operating vehicles e.g., petroleum and petroleum products, antifreeze or batteries, and shall utilize any such Hazardous Materials in a safe and prudent manner. Disposal of any Hazardous Materials at or under the Airport is strictly prohibited.

18.2.3 Permittee shall be solely and fully responsible for the reporting of Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from Permittee's activities on the Airport. Permittee shall immediately notify City of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.

18.2.4 Permittee shall be solely and fully responsible and liable in the event Permittee causes or permits Hazardous Materials to be released at the Airport, or to enter the City's sewerage or storm drainage system, or groundwater. Permittee shall take all necessary precautions to prevent any Hazardous Materials from entering into the City's sewerage, storm drainage system, or the groundwater, or from being released on the Airport. If at any time a release of Hazardous Materials is discovered on the Premises, the Airport, City's sewerage or storm drainage system, or the groundwater, or there is the danger of a release of Hazardous Materials, Permittee, at Permittee's sole cost and expense, shall remove such Hazardous Materials from the Airport or the groundwater underlying the Airport, or the City's storm drainage and sewerage system in accordance with requirements of all appropriate governmental authorities. In addition to all other rights and remedies of City hereunder, if such release of Hazardous Materials is not removed from the Airport or the groundwater underlying the Airport by Permittee within ninety (90) days after Permittee, City, or other third party discovers such Hazardous Materials, City, in its discretion, may pay to have same removed and Permittee shall reimburse City within five (5) days of City's demand for payment.

18.2.5 Permittee shall indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of the presence or cleanup of Hazardous Materials on the Airport or the subsurface. After notice from City, and at the discretion of City, Permittee shall cease its activities on the Airport until such release or the danger of release of Hazardous Materials is cured. City's decision to require Permittee to cease activities may be based factors such as Permittee's continued activities may result in a subsequent release of Hazardous Materials, ceasing activities may aid the City in determining the extent of liability of Permittee or may aid the City in cleanup and remediation of the Hazardous Materials.

18.2.6 Permittee's obligations under this Article 17 shall survive the expiration or earlier revocation or suspension of this Permit.

ARTICLE 19 - TAXES, CHARGES AND ASSESSMENTS

19.1 **Taxes and Other Charges.** Permittee covenants to pay before delinquency, and without notice or demand, any and all taxes or charges which shall be

levied, imposed, or assessed against Permittee, Permittee's property, Permittee's interest in its operations or possession of its assets, or for which Permittee may become liable under the Provisions of this Permit. Any such payment made under this Article shall not reduce the amount of the Trip Fee or any other fee that is required to be paid by Permittee to City under the Provisions of this Permit. Permittee shall promptly pay any penalty or other charge which may be due and payable to City or any other party or governmental entity in connection with this Permit and all rights and privileges granted hereunder.

19.2 **Tax Indemnification.** Permittee agrees to protect, defend, indemnify and hold harmless City from and against any expense or damage resulting in whole or in part, directly or indirectly, from such contest or proceeding, and further agrees to protect, defend, indemnify and hold harmless City, and the Airport and any improvements thereon, from and against any liability, loss, or damage resulting in whole or in part, directly or indirectly, from any tax or charge required to be paid by Permittee, from any other sums imposed thereon, and from any proceedings to enforce the collection of any tax or charge for which Permittee may be liable.

19.3 **Possessory Interest.** Permittee acknowledges that this Permit is not intended to, but may create a possessory interest in Permittee's operation onto the Airport, and that such interest may give rise to a real estate or possessory interest tax; in that event, Permittee agrees to pay such tax if and when it is due without any credit or offset to the Trip Fee or such other fees or charges, that are due and payable to City hereunder.

ARTICLE 20 - INSURANCE

20.1 During the term of this Permit, Permittee shall obtain and maintain, or shall cause to be obtained and maintained at its sole cost and expense, the policies of insurance coverage described in **EXHIBIT C**, on terms and conditions and in amounts as required by City. Any Vehicle operated on the Airport by or on behalf of Permittee must be covered by such insurance policy. Permittee shall provide evidence of that each Vehicle is still covered by insurance upon City's reasonable request. City shall not be obligated to take out insurance on Permittee's property. Permittee shall provide City with certificates of insurance or copies of all policies and endorsements required by City.

ARTICLE 21 - MISCELLANEOUS

21.1 **Bailee Disclaimer.** The parties understand and agree that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to Permittee's property or the property of Permittee's contractors, agents, employees and invitees.

21.2 **Consent.** Whenever in this Permit the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

21.3 **Controlling Law.** Except as federal law may apply, the parties agree that this Permit shall be governed and construed by and according to the laws of the State of California.

21.4 **Counterparts.** This Permit may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

21.5 **Headings.** The paragraph headings are not a part of this Permit and shall have no effect upon the construction or interpretation of any part of the Permit.

21.6 **Resolutions.** Permittee shall submit a copy of any corporate resolution, where required, which authorizes any director or officer to act on behalf of Permittee or which authorizes Permittee to enter into this Permit.

21.7 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Permit is void or unenforceable, the remaining provisions of this Permit shall remain in effect.

21.8 **Time of Essence.** Time is of the essence of this Permit and each of its provisions.

21.9 **Venue.** In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be had in a state court in the City of San Jose or in a United States District Court for the Northern District of California.

21.10 **Prohibition on Gifts.**

21.10.1 Permittee is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in the San Jose Municipal Code.

21.10.2 Permittee agrees not to offer any City officer or designated employee any gift prohibited by this Chapter.

21.10.3 The offer or giving of any gift prohibited by the Municipal Code shall constitute a material violation of this Permit by Permittee.

IN WITNESS WHEREOF, the parties hereto have executed this Permit in duplicate by their duly authorized officers.

DATE OF PERMIT ISSUANCE: _____

Permittee's authorization to commence the activities authorized under this Permit on
_____ ("Commencement Date") and shall terminate such activities on
_____ (the "Expiration Date").

CITY OF SAN JOSE:
A Municipal Corporation

By: _____
Director of Aviation

ACCEPTANCE

The undersigned as Permittee hereby agrees, in consideration of the revocable Permit granted above, to perform and abide by the terms, conditions, restrictions, and obligations of this Permit. In addition, the Permittee hereby agrees that all information currently on file at the Airport, or submitted with this document, is correct and accurate and that all licenses and insurance coverages are current and in the amounts required by the Permit.

Initial Trip Fee Security Deposit: \$_____.

Date of Acceptance: _____, _____.
(mm/dd) (yyyy)

PERMITTEE: _____, a(n)
_____ corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Address: _____

[PLEASE DO NOT USE A P.O. BOX NUMBER AS ADDRESS]

EXHIBIT A

RULES AND REGULATIONS

EXHIBITS

APPROVED LOCATIONS FOR PICK-UP AND DROP-OFF AT AIRPORT

EXHIBIT C **INSURANCE**

Permittee shall maintain in effect during the term of this Permit, the policies of insurance in the amounts as required by any Federal, State or Local laws or Regulatory Agencies, including, but not limited to, the California Public Utilities Commission, now in effect or hereafter enacted. A Permittee not regulated by the above mentioned Federal, State or local Regulatory Agencies, including the California Public Utilities Commission, shall maintain in effect during the term of this Permit the policies of insurance in the amounts as designated below.

Notification from any Federal, State or Local Regulatory Agency, including the California Public Utilities Commission, of the expiration, revocation, or cancellation of the required policies of insurance in the amount required by said Agency may result in the suspension and/or revocation of this Permit per Article 9 of this Permit

1. Commercial General Liability.

A COMMERCIAL GENERAL LIABILITY policy is encouraged but not required by the City.

2. Workers' Compensation and Employees' Liability.

A WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY policy as required by and written in accordance with the laws of the State of California and providing coverage for any and all employees of Permittee:

- a. This policy shall provide coverage for Workers' Compensation (Coverage A); and
- b. This policy shall also provide coverage for \$1,000,000 Employers' Liability (Coverage B); and
- c. This policy shall require an "ALL STATES" endorsement if Permittee is domiciled outside of the State of California and the policy is written outside California.

If Worker's Compensation coverage is not required by law, Permittee shall submit a Worker's Compensation Waiver form to the Airport.

3. Automobile Liability.

A COMPREHENSIVE BUSINESS AUTO policy with a minimum limit of not less than the amounts listed below, combined single limit for bodily injury and property damage, and providing at least all of the coverage listed below:

	<u>Amount of Coverage</u>
Taxicabs -	\$300,000
Vehicles with seating capacity of 7 passengers or less -	\$750,000
Vehicles with seating capacity of 8 passengers through 15 passengers, inclusive -	\$1,500,000
Vehicles with seating capacity of 16 passengers or more	\$5,000,000
Couriers	\$600,000

- a. Coverage shall be applicable to any and all leased, owned, hired or non-owned Vehicles used pursuant to Permit operations.
- b. Any and all mobile equipment, which is not covered under this Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy, if Permittee has such a policy.

4. **Endorsements.** All of the following endorsements are required to be made a part of each of the above required policies as stipulated below (and any Excess Liability policy shall be identified on the Certificate of Insurance in the "following form"):

- a. "The City of San Jose, its employees, officers, agents and contractors are hereby added as additional insured as respects premises leased or licensed to, and operations permitted to, Permittee under this Permit."
- b. "This policy shall be considered primary insurance as respects any other valid and collectible insurance that the City of San Jose may possess, including any self-insured retention City may have, and any other insurance the City does possess shall be considered excess insurance only."
- c. "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This will not act to increase the limit of liability of the insuring company."
- d. "Thirty (30) days' prior written notice of a material revision, nonrenewal or cancellation shall be given to the City of San Jose in the event of cancellation or nonrenewal of this policy for whatever reason before the same may become effective." Such notice shall be sent to: City of San

Jose, Risk Management, 200 East Santa Clara Street, San Jose, California 95113.

- e. Include as 'Certificate Holder', Department of Aviation, Norman Y. Mineta San Jose International Airport, 1701 Airport Boulevard, Suite B-1130, San Jose, California 95110-1206.
- f. Endorsement No. 4 (30 days' notice) listed above is the only endorsement required to be made a part of the Workers' Compensation and Employers' Liability policy.
- g. City requests, but does not require, that Permittee include the above referenced endorsements in any Commercial General Liability policy that Permittee may have.

5. **Schedule Auto.** For "Scheduled Auto" type of coverage, Permittee's insurance company must send a list of vehicles covered under the policy prior to the commencement of operation and must send revised list of vehicles covered under the policy within 30 days of any change in the list of covered vehicles.

6. **Proof of Coverage.** Copies of all the required endorsements shall be attached to the Certificate of Insurance which shall be provided by Permittee's insurance company or companies as evidence of the stipulated coverage. This Proof of Insurance shall then be mailed to the City of San Jose, Risk Management, 200 East Santa Clara Street, San Jose, California 95113.

7. **Review of Coverage.** These insurance requirements shall be subject to annual review by the Risk Manager. If the Risk Manager should require any change in coverage, any such change shall be noticed in writing by City to Permittee and Permittee shall comply with the notice of change within thirty (30) days of the date of receipt of this notice.

8. **Acceptability of Insurance.** Insurance is to be placed with insurers acceptable to the City's Risk Manager.

9. **Waiver of Subrogation.** City and Permittee hereby mutually agree that so long as their respective insurance carriers concur, any fire and extended coverage insurance policies carried on properties which are the subject of this Permit shall include a waiver of subrogation against the other party hereto, provided that such agreement applies only to subsequent loss.